

Message Text

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TO AMEMBASSY COPENHAGEN IMMEDIATE

AMEMBASSY OSLO

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LIMDIS

E.O. 11652: XGDS

TAGS: PLOS

SUBJECT: STRAITS CLAUSE

REF: OSLO 776

OSLO AND COPENHAGEN PLEASE PASS BERNARD OXMAN

1. STRAITS CLAUSE PRESENTED TO SOVIETS IN NEW YORK AND
LATER TO DUDGEON THROUGH GLOVER READS QUOTE THE PROVISIONS
OF THIS CHAPTER SHALL NOT AFFECT THE LEGAL REGIME OF STRAIT
LESS THAN SIX MILES WIDE THROUGH WHICH TRANSIT IS REGULATED
BY INTERNATIONAL AGREEMENTS ALREADY IN FORCE SPECIFICALLY
RELATING TO SUCH STRAITS UNQUOTE. OVERALL PACKAGE WOULD
MARRY THIS CLAUSE TO BASIC UK APPROACH, I.E. FREE TRANSIT
IN HIGH SEAS TO HIGH SEAS STRAITS, AN ISLAND EXCEPTION,
AND INNOCENT PASSAGE WHEREVER NO FREE TRANSIT.

2. ABOVE CLAUSE IS SOVIET LANGUAGE FROM L.11 WITH ADDITION
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OF WORDS QUOTE LESS THAN SIX MILES WIDE UNQUOTE AND QUOTE
ALREADY IN FORCE UNQUOTE, BOTH OF WHICH ADDITIONS THE DANES
SHOULD FIND IRRELEVANT TO THEIR ,ARTICULAR CONCERNS.

3. AT MEETING WITH DANES IN CARACAS, THEY REJECTED BOTH US
AND UK EXCEPTION CLAUSES POINTING MORE TO NEED TO DECOUPLE
REGIME AND CONVENTION THAN TO ANY DEFICIENCY THEY PERCEIVED
IN QUOTE SHALL NOT AFFECT OBLIGATIONS ARISING UNDER UNQUOTE
LANGUAGE ALTHOUGH THEY WERE CLEARLY CONSCIOUS OF LATTER
PROBLEM AND FELT MORE COMFORTABLE WITH SOVIET LANGUAGE.
DANES NEXT SAID SOVIET L.11 LANGUAGE SOLVED THEIR PROBLEM
THEN HEDGED SLIGHTLY INDICATING THEY WOULD BE HAPPIER IF
SOVIETS, AND POSSIBLY US AND UK WOULD ASSURE THEM PRIVATELY
THAT SOVIET LANGUAGE WAS INTENDED TO COVER DANISH STRAITS.

4. DUDGEON'S CLAUSE PRESENTED THROUGH GLOVER 14 FEB 75,
READS THAT ANY NEW REGIME FOR STRAITS QUOTE SHALL NOT
AFFECT TREATIES AND OTHER INTERNATIONAL AGREEMENTS ALREADY
IN FORCE SPECIFICALLY RELATING TO PARTICULAR STRAITS
UNQUOTE.

5. SOVIET OBJECTIONS TO CLAUSE PARA 1 ABOVE CONVEYED
DURING EVENSEN MEETING STEM FROM (A) PHILOSOPHICAL OB-
JECTION TO MENTION OF SIX MILES, COUPLED WITH SOME SUS-
PICION THAT ROMANOV DOESN'T REALLY UNDERSTAND IT IS NOT A
SIX MILE EXCEPTION AND (B) SOVIET CONTENTION THAT CLAUSE
DOES NOT SOLVE FINNISH PROBLEM. LATTER POINT IS ARGUABLE
BUT WE RECOGNIZE CLAUSE MAY NEED FINE TUNING TO ACCOMMO-
DATE FINNS AND PERHAPS ARABS. SO LONG AS APPLICABILITY
OF RESULT IS LIMITED TO NARROW STRAITS WE HAVE SOME
LATITUDE TO DO THIS.

6. OUR ANALYSIS OF DUDGEON PROPOSAL INDICATES HE HAS
FOCUSED ON COSMETIC FIX OF OBLIGATIONS ARISING UNDER PROB-
LEM, WITHOUT ANY REAL SHIFT IN LEGAL EFFECT FROM BASIC US
AND UK APPROACH. TO EXTENT DUDGEON CLAUSE DOES NOT DECOUPLE
CONVENTION/AGREEMENT AND EXISTING REGIME, WE DON'T THINK
IT WILL MEET DANISH OR ARAB CONCERNS.

7. CLAUSE PARA 1 ABOVE IS STILL PREFERRED US APPROACH.
IF YOU CAN SECURE DANISH CONCURRENCE WE WOULD THEN TRY TO
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SOLVE MORE CLEARLY FINNISH PROBLEM, PERHAPS BY ADDITION
OF REFERENCE TO EXISTING PRACTICE OF STATES AFTER WORDS
QUOTE LEGAL REGIME UNQUOTE, THEN GO BACK TO SOVIETS HOPE-
FULLY WITH UK, DANISH AND PERHAPS FINNISH SUPPORT. ON
THIS BASIS PROPOSAL MIGHT GET MORE FAIR HEARING, ES-
PECIALLY IF PITCH IS MADE TO MOVCHAN.

8. IN REJECTING CLAUSE PARA 1 ABOVE, SOVIETS RESURRECTED PRIVATE ASSURANCES SCHEME US HAD SUGGESTED IN CARACAS. CURIOSLY ON SAME DAY GLOVER WAS CONVEYING IN WASHINGTON UK REJECTION OF IDEA. WE HAVE NO CLEAR NOTION OF PRECISELY WHAT THESE ASSURANCES WOULD CONSIST OF, FROM WHOM AND IN WHAT MANNER THEY WOULD BE CONVEYED TO DANES. GIVEN DIFFERING UK, SOVIET AND DANISH VIEWS ON EXISTING REGIME THIS APPROACH DOES NOT APPEAR VERY PROMISING. NEVERTHELESS, IF YOU ARE UNABLE TO SECURE DANISH AGREEMENT TO US PREFERRED APPROACH REQUEST YOU EXPLORE DANISH VIEWS ON

THESE QUESTIONS UNLESS YOUR TALKS WITH DUDGEON CONVINCE YOU IDEA IS A CLEAR NON-STARTER.

9. PROPOSAL TO HAMID IN CARACAS CONTAINED TWO EXCEPTION CLAUSES, WITH STANDARD US/UK APPROACH APPLICABLE IN HIGH SEAS STRAITS AND FOLLOWING ADDITIONAL PROPOSAL TO COVER TIRAN. QUOTE THE TREATY WOULD PROVIDE THAT THE PROVISIONS RELATING TO INNOCENT PASSAGE OF SUCH STRAITS WOULD NOT AFFECT RIGHTS OR DUTIES ARISING UNDER CHARTER OF THE UNITED NATIONS OR UNDER INTERNATIONAL CONVENTIONS AND REGIMES RELATING TO A PARTICULAR STRAIT. UNQUOTE. WHILE SOME OF THIS LANGUAGE MAY BE SUITABLE FOR SUBSTITUTION IN CLAUSE PARA 1 ABOVE, BASIC STRUCTURE OF TWO EXCEPTION CLAUSES EXTRAORDINARILY DIFFICULT TO ACCOMMODATE TO DANISH PROBLEM.

10. ABOVE IS BACKGROUND FOR USE IN YOUR DISCRETION. KISSINGER

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